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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,631	04/14/2005	Anne Costantini	37261P108	8391
8791	7590	06/11/2008	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP			MENEZES, MARCUS	
1279 OAKMEAD PARKWAY				
SUNNYVALE, CA 94085-4040			ART UNIT	PAPER NUMBER
			3677	
			MAIL DATE	DELIVERY MODE
			06/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/531,631	COSTANTINI, ANNE	
	<b>Examiner</b>	<b>Art Unit</b>	
	MARCUS MENEZES	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 March 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-15 and 17-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-7,10,12-15,20,23-27,29 and 31 is/are rejected.

7) Claim(s) 8,9,11,17-19,21,22,28 and 30 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

- Applicant should note that all §112 rejections from the previous office action dated September 13, 2007 have been withdrawn.

### ***Claim Rejections - 35 USC § 102***

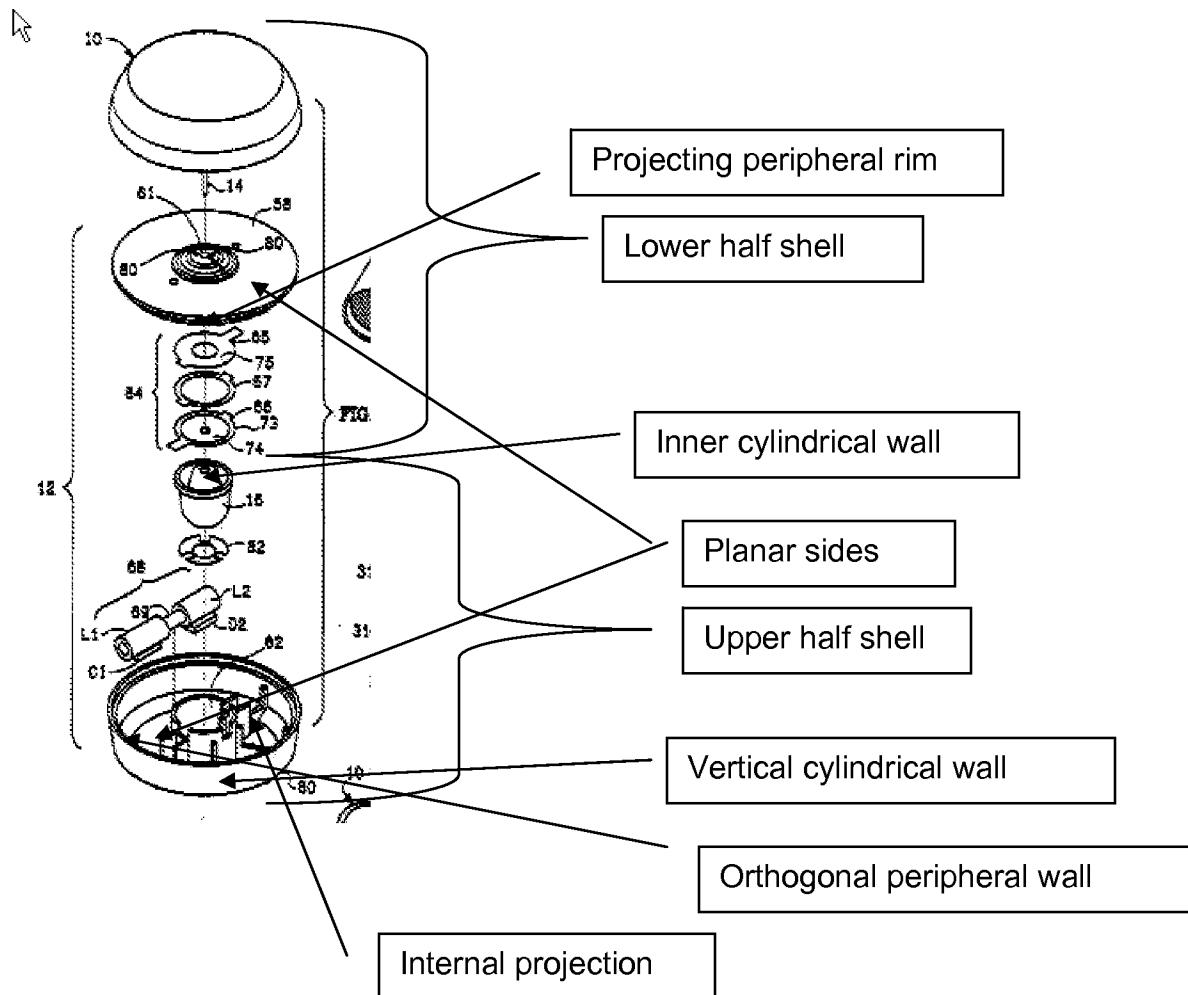
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10, 12-15, 20, 23-27, 29 and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thurmond et al. (US 5347262, hereinafter “Thurmond”).

Thurmond discloses an electronic button tag comprising a transponder (68) that is capable of being programmed, (see Summary of the Invention – lines 20-30), enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage (61) for a fixing means (10), wherein the shell is made from two half shells namely a lower half shell (or first shell portion) and an upper half shell (or second shell portion), which are capable of being assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means, and the transponder is enclosed within the two half-shells and enclosed without compression between the two half-shells. (See figure below). Note, the method of assembly, specifically the laser weld limitation, is not germane to the issue of patentability of the device itself. Therefore, this limitation has been given minimal patentable weight.



Regarding claim 2, Thurmond further discloses that the two half shells are provided with complementary internal and external walls, contributing to their assembly.

Regarding claim 3, Thurmond further discloses that, as best understood by the Examiner, that the upper half shell comprises of a sleeve (62) with a central opening around the median axis, wherein a cylindrical wall (16) projects outwards on a planar wall (82) of the upper half-shell and is extended by an inner cylindrical wall (see above)

below said planar wall to connect with a corresponding lower cylindrical wall (74) on the lower half shell, the planar wall (82) of the upper half shell being connected on its periphery to a vertical cylindrical wall (see above) via element 62, connecting it to the lower half-shell.

Regarding claims 4 and 24, Thurmond further discloses that the lower half shell comprises of a lower cylindrical inner wall (75) around its median axis corresponding to that of the sleeve of the upper half shell and providing the transverse passage, that the lower cylindrical inner wall is provided with an internal projection (65), that the lower cylindrical inner wall is provided with a projecting peripheral rim (see above) cooperating with the orthogonal peripheral wall of the upper half shell (see above).

Regarding claims 5 and 25, Thurmond further discloses that an internal projection (65) is placed between the lower cylindrical inner wall (75) and the peripheral rim.

Regarding claims 6 and 26, Thurmond further discloses that the internal projection (65) is of a lesser height than the distance between the planar wall of the upper half-shell and an opposite planar wall of the lower half-shell.

Regarding claims 7 and 27, Thurmond further discloses that the lower cylindrical wall (74) of the lower half shell has a conical form with an upper shoulder enabling the tip of the punch of a male panel tag to be locked in.

Regarding claims 10, 20, 23 and 29, Thurmond discloses, as best understood by the examiner, a transponder fixed into position. As for the use of an adhesive, see above rejection regarding the method of assembly or forming of a device.

Regarding claim 12, Thurmond further discloses that the lower half-shell is provided with a peripheral rim which on assembly fits into the external shoulder of the vertical wall of the upper half shell.

Regarding claim 14, Thurmond further discloses that the cylindrical wall (74) of the first shell portion provides a passage for a punch of a male tag, wherein said cylindrical wall of the first shell portion having a conical form and providing a shoulder (73) within the sleeve to enable a top of the punch of male tag to be locked in the sleeve.

Regarding claim 15, Thurmond further discloses an internal projection (see above) that is located between the cylindrical wall (16) and a peripheral rim (rim of the orthogonal peripheral wall) of the second shell portion, the internal projection being of a height less than the distance between the planar walls of the first and second shell portions.

Regarding claim 31, Thurmond further discloses that the two half-shells have substantially a same radius about a median axis.

***Allowable Subject Matter***

Claims 8,9,11,17-19,21,22,28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed March 12, 2008 have been fully considered but they are not persuasive.

Applicant argues that the cited prior art "does not disclose or suggest a programmable transponder enclosed in a shell." Examiner respectfully disagrees. Programmable is defined as my the Merriam-Webster Online Dictionary as "to provide with a program." The cited prior art states (col.2, lines 20-30) that the transponder is "coupled to the switch *for responding* to an irradiated interrogation signal *by radiating an alarm signal* when the switch changes state in response to application to the two components of at least said predetermined threshold separation force." (Emphasis added). Thus, the transponder is provided with a program by the switch; hence said transponder is programmable.

Applicant argues that the cited prior art does not disclose "said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell." However, Applicant does not state how this limitation is not fulfilled; thus Examiner maintains the rejection is proper.

Applicant argues that "the fixing means 10 is not part of the lower half-shell" and "that element 58 is simply a cover and does not comprise a half shell..." Again, Applicant does not state why combined elements 10 and 58 of the cited prior art cannot structurally read on the claim limitations. Without further defining the structure, Examiner maintains that the rejection is proper.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARCUS MENEZES whose telephone number is (571)272-6284. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vic Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MM/

/Robert J. Sandy/  
Primary Examiner, Art Unit 3677

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